No. 85-1384

In The
Supreme Court of the United States
October Term, 1986

WILLIAM R. TURNER, et al., and
DR. LEROY BLACK, et al.,

Petitioners,

v.

LEONARD SAFLEY, et al., and
MARY WEBB, et al., individually and as a
class of similarly situated people,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly ruled that the District Court's findings of fact were supported by substantial evidence and are not clearly erroneous?

2. Whether the Court of Appeals correctly ruled that the rules and practices of the Missouri Department of Corrections governing prisoner correspondence violate inmates' First Amendment rights?

3. Whether the Court of Appeals correctly ruled that the rules and practices of the Missouri Department of Corrections concerning prisoner marriage violate inmates' fundamental right to marry?

LIST OF ALL PARTIES

All parties are not named in the caption of Petitioners' Brief. In addition to Leonard Safley and Mary Webb, Pearl Jean Watson-Safley, Robert E. Thompson, Linda Scott Thompson, William Quillun, Diana Finley, Nancy Row, Judy Henderson, Shirley Lute, Connie Flowers, Patrick Barks, and Alice Garnett are all named class plaintiffs.

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STATEMENT OF THE CASE

I. Course of Proceedings

Plaintiff Leonard Safley filed his initial complaints pro se on October 16, 1981, and on January 29, 1982. The second complaint, for declaratory and injunctive relief, was the forerunner to the class action allegations of plaintiffs' amended complaint on which the case was tried. Joint Appendix (hereinafter J.A.) at 6-17.

Early in March, 1982, counsel was appointed to represent Mr. Safley in both cases. Subsequently, Pearl Jean Watson, an inmate of Renz Correctional Center (hereinafter Renz), was granted leave to intervene as a party plaintiff.

On March 26, 1982, plaintiffs appeared in District Court for a hearing on their motion for a preliminary injunction. That hearing was mooted when the Honorable Howard F. Sachs, District Judge, allowed the use of his courtroom for the marriage of those plaintiffs.

Defendants opposed the marriage of Mr. Safley (age 54) and Ms. Watson (age 34) even though they satisfied the requirements of Missouri law for a valid marriage and the extant regulation of the Department of Corrections did not give prison authorities the right to prevent inmate marriages. The trial judge permitted the use of his courtroom because "[i]f the court had recognized a substantial state interest in preventing the marriage, permission would, of course, have been denied. No such interest was, or has been, presented." *Safley v. Turner*, 586 F. Supp. 589, 594 n.1 (W.D. Mo. 1984).

The Safleys' claims were not entirely mooted by the marriage. In the course of investigation and discovery,

it became clear that their experience with correspondence and marriage was illustrative of a much larger problem facing inmates in the Missouri prison system, particularly for inmates at Renz.

After consulting with numerous inmates at Renz and at other institutions, plaintiffs' counsel obtained leave to file an amended complaint joining additional parties, certifying a class action under Federal Rule of Civil Procedure 23(b)(2), and clarifying plaintiffs' theories of recovery for injunctive and declaratory relief. J.A. at 2, 6-17.

The evidence was presented to Judge Sachs in late February and early March of 1984. In the five days of trial, the Court observed the examination of 32 witnesses and received stipulations concerning the testimony of 21 other witnesses whom plaintiffs were prepared to call. The District Court requested that counsel enter into those stipulations in order to shorten the trial and avoid repetitive proof by plaintiffs. Vol. IV at 216.

After the trial, both parties submitted proposed findings of fact and conclusions of law. In addition, plaintiffs' counsel submitted affidavits and exhibits supporting the belief that some of plaintiffs' witnesses had been harassed by prison employees as a result of their trial testimony. Plaintiffs' Post-Trial Brief (filed March 23, 1984).

The District Court's opinion on the merits, filed on May 7, 1984, J.A. at 4, adopted most of the factual findings requested by plaintiffs and implicitly rejected the proposed factual findings and conclusions of law offered by defendants. The Court instructed the parties to attempt to negotiate a suitable decree in accordance with

his opinion. The Court also ordered defendants to refrain from harassing inmates who had participated in the suit and who were "reasonably concerned that their testimony made them the subject of retaliation or harassment by employees of the Department of Corrections." 586 F. Supp. at 593, 597.

In response to the Court's Order, the Department of Corrections drafted proposed regulations concerning inmate marriage and correspondence. The regulations were approved by counsel for both sides and were submitted to the Court with a mutually acceptable proposed Order. On June 18, 1984, the Court entered that Order, thereby requiring the Missouri Department of Corrections to adopt the revised regulations the Department had drafted. J.A. at 4-5, 51-59.

Defendants appealed, and the Court of Appeals for the Eighth Circuit unanimously affirmed on November 19, 1985. The Court below "thoroughly examined the record and found substantial evidence to suport each finding of fact," and therefore affirmed those findings. *Safley v. Turner*, 777 F.2d 1307, 1315 (8th Cir. 1985). The Court also approved Judge Sachs' legal analysis. *Id.* at 1313, 1314.

Significantly, the record reflects no attempt by defendants or the Missouri Department of Corrections to stay enforcement of the revised regulations adopted by the Department. The record is also barren of any effort by defendants or the Missouri Department of Corrections to modify the new rules in any substantive way. Missouri prisons have thus been operating under the revised marriage and correspondence regulations for over two years.

II. Statement of Facts

The Statements of Facts in Petitioners' Brief and the Solicitor General's Brief are remarkable for ignoring all evidence which supports the District Court's findings of fact or that conflicts with defendants' legal position. Defendants and amici also present as "uncontradicted" gospel truth testimony by defendants' witnesses on direct examination which apparently was deemed non-credible by the trier of fact. Their one-sided presentation and argument that there was no pattern or practice of abuse, Petitioners' Brief at 41-42, makes it necessary to review in some detail the evidence supporting the opinions of the Court of Appeals and the District Court.

The Missouri Division of Adult Institutions operates 12 adult correctional facilities. Transcript Vol. III at 259 (hereinafter Vol. — at —). When this case was tried, Renz housed a few male inmates and most female inmates, except for a majority of those designated for minimum security. Minimum security female prisoners resided at Chillicothe Correctional Center (hereinafter Chillicothe). Vol. II at 70; OFFICIAL MANUAL OF THE STATE OF MISSOURI (1985-86) at 334. A recent transfer of inmates to Chillicothe left only certain minimum and maximum security female prisoners currently residing at Renz. Petitioners' Brief at 6 n.3.

Defendant William Turner is Superintendent of Renz. Defendant Earl Englebrecht is Caseworker Supervisor at Renz. Defendant Betty Bowen is a Renz caseworker dealing with female inmates. Defendant W. David Blackwell was the Director of the Division of Adult Institutions until shortly before trial, when he was succeeded by Donald

Wyrick, long-time warden of the largest state facility, the Missouri State Penitentiary (hereinafter MSP).

Although defendants make much of the unique situation at Renz, the Department of Corrections continues to boast that it has made the necessary "accommodations . . . to meet maximum security needs" at that institution. OFFICIAL MANUAL OF THE STATE OF MISSOURI at 334. Despite the "minimum security perimeter" at Renz, there have been only two escapes since 1979. Vol. II at 74.

Plaintiffs have repeatedly acknowledged the legitimate security concerns of the Department of Corrections. Plaintiffs' Amended Complaint, J.A. at 16; Vol. I at 11-12. Plaintiffs further acknowledged the Division's right to impose reasonable restrictions on marriage ceremonies, to counsel inmates concerning proposed marriages, and to read all non-privileged correspondence. J.A. at 16-17; Vol. I at 5; Vol. IV at 40-41.

In light of these accommodations, plaintiffs take vigorous exception to the inaccurate suggestion that they demand "virtually unrestricted correspondence," Iowa's Amicus Brief at 2, and to the frequent reference to the specter of "prison gang violence" and other supposed evils mentioned in Petitioners' Brief and the amici filings which support it. There was *no* evidence presented at trial tying correspondence or marriage to gang activity in Missouri prisons.

Instead, defendants only speculated about problems that inmate-to-inmate correspondence "could" cause. In response to one such question, defendant Blackwell suggested that something called "carte blanche correspon-

dence" could be misused by prisoners, including gang members. Vol. III at 264-65. Plaintiffs have never suggested they wanted "carte blanche correspondence."

Similarly, there was no evidence that the deaths at MSP mentioned by defendants, Petitioners' Brief at 7, were related to either correspondence or marriage; that any of plaintiffs' witnesses were involved in any way in gangs or gang violence; or that more than a small percentage of inmates in the Missouri Department of Corrections belongs to gangs. Vol. IV at 79. Indeed, there was no evidence in the District Court about the number of gang members supposedly housed in Missouri prisons.

The Solicitor General's Brief cites a 1985 Justice Department study suggesting that Missouri prisons hold 550 gang members who constitute 6.7% of its prison population but who cause 90% of the "problems" in Missouri correctional facilities. Solicitor General's Brief at 20 n.13. This study is not in the record and was not considered by the courts below. Moreover, neither the courts below nor plaintiffs have had the opportunity to confirm the accuracy of those representations.

Assuming for the moment that the report is accurate, it suggests (1) Missouri has been able to identify its gang members; (2) 93.3% of Missouri prison inmates do *not* belong to gangs; and (3) those 93.3% of Missouri offenders cause only 10% of the "problems" faced by correction officials. In other words, the study actually confirms the evidence below that the vast majority of inmates who wish

to correspond and/or marry do not threaten the security or order of Missouri prisons in any way.[1]

A. Correspondence

The Missouri Department of Corrections' inmate mail rule, J.A. at 33, purportedly governed all prisoner correspondence. As the District Court found, however, the correspondence regulation had been violated repeatedly at Renz and elsewhere within the Department of Corrections. 586 F. Supp. at 591.

1. *Inmate-to-Civilian Correspondence*

Defendants' focus on inmate-to-inmate correspondence studiously ignores the pattern of First Amendment violations revealed by plaintiffs' proof of interference with correspondence between inmates and nonincarcerted persons. Defendants contend that the District Court's findings on these points were not supported by substantial evidence. They ignore the testimony of numerous witnesses whose

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[1]It is plaintiffs' understanding that the facts presented to the Court in the Brief and "Lodging" filed by the Texas Attorney General as amicus curiae present an incomplete and possibly misleading picture of the Texas Prison system. Counsel for the *Guajardo* plaintiffs have sought leave to file an amicus curiae brief to correct the record concerning proceedings in that case.

Plaintiffs object to the filings by the State of Texas because the factual disputes raised have no bearing on this case. Petitioners' counsel agrees the controversy generated by the Texas amicus curiae brief is inappropriate because he has refused to consent to an amicus response by the *Guajardo* plaintiffs. See August 27, 1986, letter from Henry T. Herschel, Missouri Assistant Attorney General, to Ann Lents, reproduced in the *Guajardo* Plaintiffs' Amicus Brief. Nevertheless, plaintiffs defer to the amicus curiae brief of the *Guajardo* plaintiffs for a response to the Texas Attorney General's factual allegations.

mail to and from civilians was refused in violation of the Division rule, the Renz institutional rule, and *Procunier v. Martinez,* 416 U.S. 396 (1974). Finding Nos. 5(b), 5(d), 586 F. Supp. at 591; Vol. I at 102, 104, 136-40; Vol. II at 16-18; Vol. III at 91-92; Vol. IV at 214, 220; Vol. V at 126.

For example, mail from Judy Henderson's brother, father, and civilian friends was refused by Renz on the factually incorrect ground that the correspondents were incarcerated. Vol. III at 185, 192-94. Defendants assert —without any citation to the record—that they believed that Judy Henderson's family and Alice Garnett were assisting in the circumvention of the mail rule and, thus, they had a legitimate basis for refusing or returning mail. Petitioners' Brief at 44. There is no such evidence in the record, and the notices given to Ms. Henderson at the time the mail was refused indicated it was "unauthorized correspondence from another correctional facility," not that it contained contraband, *i.e.,* a letter or message from an unauthorized person. *See, e.g.,* P. Ex. 6, Vol. III at 192; P. Ex. 7, Vol. III at 192, 193; P. Ex. 16, Vol. III at 194.

In order to evaluate the sort of correspondence which defendants find so threatening, plaintiffs introduced into evidence numerous letters which had been stopped by Renz. As an example, plaintiffs invite the Court's attention to Plaintiffs' Exhibit 16, Vol. III at 192, attached to this Brief as Appendix (hereinafter App.) A.

Ms. Henderson's innocent message to her younger brother was stopped by defendant Englebrecht on the factually incorrect ground that her brother's home address

was a prison. Vol. III at 194. Even if Englebrecht had been correct, the divisional rules specifically provided that "[c]orrespondence with immediate family members who are inmates in other correctional institutions *will be permitted.*" J.A. at 34 (emphasis added). Englebrecht repeatedly violated his Department's rule and also admitted that "[t]here was nothing in the content of the letters that was objectionable." Vol. V at 84.

Similarly, plaintiffs invite the Court's attention to Plaintiffs' Exhibit 72, Vol. IV at 185, App. B. This Hallmark birthday card from Leonard Safley's elderly mother to Ms. Watson was refused by Renz solely because Mr. Safley's mother signed the card "We Love You very much—Mama Nez & Len." Vol. V at 94.

2. *Inmate-to-Inmate Correspondence*

The stated purpose of the Renz inmate mail rule recognized the importance of communication to prisoners' rehabilitation:

> Correspondence with members of an inmate's family, close friends, associates, and organizations is beneficial to the morale of all confined persons and may form the basis of good judgement [sic] in the institution and in the community. It will be encouraged and supported.

J.A. at 38. *See also* J.A. at 33.

The portion of the rule which was used by defendants to justify the refusal of inmate-to-inmate mail provided that "correspondence may be permitted between non-family members if the classification/treatment team of each inmate deems it in the best interests of the parties involved." J.A. at 34. The focus of the inquiry on the

"best interests" of the prisoner corroborates defendant Englebrecht's testimony that the purported purpose of the rule was to encourage rehabilitation. Vol. IV at 259.[2]

In contrast to these inspired statements of purpose, the rule as practiced at Renz was that inmates were not permitted to write or receive mail from inmates who were not immediate family members. Finding No. 6, 586 F. Supp. at 591. The practice was set forth in the Renz Inmate Orientation Booklet presented to each prisoner upon his or her arrival at the institution. *Id.*

The District Court's findings clearly rejected defendants' trial testimony that inmate-to-inmate correspondence was analyzed on a case-by-case basis by a classification/treatment team. Vol. I at 88-89; Vol. IV at 259-60. The District Court also apparently did not believe defendant Englebrecht's guess that 25% of the requests were approved. Vol. IV at 261.

The rule practiced at Renz banning inmate-to-inmate correspondence was widely known throughout the Missouri prison system. Finding No. 6, 586 F. Supp. at 591. A memorandum posted at Chillicothe warned inmates that correspondence with Renz was not allowed. Vol. I at 42-43. Numerous witnesses were told upon their arrival at other institutions that they could not write to Renz because Renz would not accept correspondence from another inmate. Vol. I at 106, 112, 118, 129, 146; Vol. II at 72, 116-

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[2]Thus, the Solicitor General's statement that "[t]he testimony at trial showed that Missouri prison officials promulgated the correspondence regulation for security reasons," Socilitor General's Brief at 20, is false. There was no evidence that the *purpose* of the "best interests" standard was security.

17; Vol. IV at 130. Other witnesses testified that various Renz officials, including Superintendent Turner, told them they would not be allowed to write inmates in other institutions, not even to relatives. Vol. I at 101, 203-04; Vol. IV at 215-16.

Some of the defendants in this case admitted that the policy at Renz is a blanket prohibition of inmate-to-inmate correspondence except for family members. Defendant Bowen twice testified that the Renz correspondence policy permits inmate correspondence only with immediate family members. Vol. II at 149, 159. Only after prompting did she recall the Department of Corrections' "best interest" party line. *Id.* at 149.

Superintendent Turner admitted that when Billy Younts asked permission to correspond with Loretta Danforth, Turner told him "[y]ou know what the policy states." Vol. I at 94. Turner and Englebrecht both conceded that the current and former Renz inmate orientation manuals state that inmate-to-inmate correspondence would be "permitted with immediate family members only." Vol. III at 7-8; Vol. V at 78; P. Ex. 91, Vol. III at 4-5; P. Ex. 92, Vol. III at 5. *See also* Vol. V at 76-77.

Mr. Englebrecht threatened Diana Finley with punishment if an MSP inmate mailed her any additional correspondence. Vol. V at 86. Even after this trial was completed—after defendants claimed that correspondence decisions were made thoughtfully on the "best interest" standard—Englebrecht denied correspondence between inmates *solely* on the grounds of the institution's "policy." P. Exs. 103 and 105, attached to Plaintiffs' Post-Trial Brief (filed March 23, 1984).

There was absolutely no evidence that any of plaintiffs' witnesses were gang members or that any of the correspondence which had been stopped or refused by Renz threatened the security or order of any prison in any way. The evidence at trial established that "[i]nmates at most institutions in the Missouri Correctional System are permitted to correspond with inmates in most other institutions." Finding No. 8, 586 F. Supp. at 591. *See* Vol. I at 107; Vol. III at 103, 109, 117; Vol. IV at 215.

The Renz staff has been able to scan and control all mail, including the inmate-to-inmate correspondence which is allowed. Finding No. 14, 586 F. Supp. at 592. Mr. Englebrecht testified that he was able to handle all suspicious correspondence coming to and from the institution in less than one hour each day and that it does not cause him a "great deal of problems." Vol. V at 70. In that one hour, he personally scanned *all* inmate-to-inmate correspondence, including letters between family members. *Id.* at 96-97, 99-100.

Defendant Blackwell also testified that the Department of Corrections has a computerized enemies list that could be utilized to help keep track of inmate-to-inmate correspondence. Vol. III at 264-65; Vol. IV at 95-96. Defendants' expert Sally Halford testified that, over her personal objection, her superiors in the Kansas Department of Corrections maintain an "open" correspondence policy; she believed it causes too many problems to attempt to restrict inmate-to-inmate correspondence. Vol. III at 168. She further opined that one reason prison officials do not want to read all the inmate-to-inmate correspondence is because it would be "very boring." Vol. III at 176.

The evidence presented also supported the finding that "[c]orrespondence between inmates has been denied despite evidence that [it] was desired simply to maintain wholesome friendships." Finding No. 13, 586 F. Supp. at 591-92. Numerous inmates testified that they wished to correspond with various inmates at other correctional facilities for the sole purpose of maintaining friendships and relationships. Vol. I at 128, 146-47, 204-05; Vol. III at 41-43, 51-52, 87-90, 103, 115, 190-92; Vol. IV at 214. Even defendant Blackwell conceded that some inmate-to-inmate correspondence would not involve illegal activities and that some inmates who are now denied the right to correspond would not write about improper or illegal activities. Vol. IV at 83, 113.

The Court may be curious as to the sort of correspondence which defendants contend is so threatening to the security of Renz. Attached as Apps. A, C, and D are but a few examples of letters stopped by Renz officials on the ground that they were unapproved inmate-to-inmate correspondence.

Plaintiffs' Exhibit 60, Vol. IV at 169-70, App. D, is a letter written by Mr. Safely to Ms. Watson prior to their marriage. It was reviewed and specifically approved for delivery by Mr. Safley's caseworker at the Tipton Pre-Release Center, but Renz *still* refused to deliver the letter to Ms. Watson. Vol. IV at 168-69. *See also* P. Exs. 58, 59, 61, 62, 63, Vol. IV at 168, 170.

Plaintiffs' Exhibit 102, Vol. V at 77, App. C, is a playful "Wanted Poster" Rudy Christensen, an inmate at Missouri Eastern Correctional Institution, tried to send his fiancée Susan Hosna to express his affection for her. His

missive was approved by his caseworker at Missouri Eastern, but stopped by Renz. Vol. III at 117; Vol. V at 77. Plaintiffs invite this Court—as they invited Englebrecht, Vol. V at 77—to find anything in this correspondence that harms the security of Renz Correctional Center.

B. Inmate Marriage

Under the Inmate Marriage Rule in effect until December, 1983, "[t]he Missouri Division of Corrections and its institutions [were] not obligated to assist an inmate or inmates who wanted to be married while incarcerated." J.A. at 45. Nothing in the regulation, however, purported to give any prison employee power to prevent an inmate's right to marry the spouse of his or her choice.

Pursuant to this rule, inmates in Missouri correctional institutions, other than Renz or Chillicothe, often were allowed to be married upon request. Finding No. 18, 586 F. Supp. at 592; Vol. II at 172-175. Officials at both women's institutions, however, demonstrated considerable hostility toward the marriage requests of female inmates. Vol. I at 49-51, 53; Vol. V at 122-23.

Defendant Turner testified that, while nothing in the rule gave him the authority to deny marriages, he still believed he had the inherent power to deny the marriage of an inmate because of Missouri statutes "which allows me to control my institution." Vol. I at 70. Specifically, he claimed he could deny a marriage "[w]hen it has an effect on the control and security of that institution, yes, sir." *Id. See also id.* at 168-69.

When quizzed about the marriages he had denied, however, Turner dropped his reference to "security" and revealed his real criterion—he would approve only those marriages which he felt were "in the inmate's best interests." Vol. I at 75-76, 180, 184; Vol. IV at 199-200. This apparently reflected Turner's confidence in his ability to determine what was "best" for—to use his expression—"my women." Vol. III at 44-45; Vol. IV at 197.[3]

Defendant Turner's trial testimony as to why he denied these marriages differed significantly from what he told the inmates at the time. He recalled approving the marriage requests of only two female inmates since January of 1979. Vol. I at 213. The evidence revealed, however, that Turner had approved the marriage of only *one* female inmate—Kathy Kurtz—and she divorced her husband a few months after the marriage.

The other inmate, Joyce Epley Roberts was actually married while on furlough from Renz. Vol. III at 63. She testified that Mr. Turner had flatly refused her request to marry Orville Roberts: "He said there was a policy and procedure, and he got a book off the shelf and told me that it was against the policy and procedure for inmates to marry because they wouldn't last." *Id.* at 60. In contrast, Mr. Turner generally allowed male inmates to marry, at least until shortly before trial. Vol. II at 22.

Superintendent Turner refused permission to marry to many female inmates at Renz on the unexplained ground that the proposed marriage was not in their "best inter-

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[3]Mr. Turner is a high school graduate and has some college credits in business administration and management acquired "through various training programs." Vol. I at 64; Vol. II at 23-24. He joined the Department of Corrections as a guard and worked exclusively with male inmates before coming to Renz. Vol. I at 64-65.

est." Finding No. 17, 586 F. Supp. at 592; Vol. I at 76, 180, 184; Vol. III at 36; Vol. IV at 199-200, 218. Others were simply told that the requested marriage would not be allowed, Vol. I at 206-07, or that marriage was "against policy and procedure." Finding No. 21, 586 F. Supp. at 592; Vol. III at 60. This unexplained rationale prevailed even after the fiancé was released from custody, Vol. III at 38, and even when prison officials responsible for the male inmates had approved the marriage. Vol. I at 206-07, 210-12; Vol. III at 247-49.

Unfortunately, inmates could not rely on the Department of Corrections' grievance process to protect them from the arbitrary exercise of Turner's self-declared authority to deny inmate marriage requests. Defendant Blackwell, the former Director of the Division of Corrections, admitted that his usual practice upon receiving an inmate's letter of complaint about a Superintendent's treatment was to have the target of the grievance write the response for his signature. Finding No. 34, 586 F. Supp. at 593; Vol. IV at 6-7, 59-60. A similar practice occurred when a formal grievance was filed with the Director. *Id.*; Vol. IV at 52-53.

Moreover, the District Court found that Superintendent Turner occasionally interfered with the grievance process and inmates have occasionally been harassed or threatened if they pursued grievances in an attempt to exercise their correspondence and marriage rights. Finding Nos. 31 and 35, 586 F. Supp. at 593. Uncontroverted evidence showed that Superintendent Turner interfered with the grievance process by first threatening to "trash can" a grievance filed by an inmate, Vol. III at 60, and then running it through a paper shredder. *Id.* at 120-21.

On December 1, 1983—shortly before the scheduled trial date—the Department of Corrections promulgated a new marriage regulation placing the burden on the inmate to provide a "compelling" reason to allow the marriage. Finding No. 16, 586 F. Supp. at 592; J.A. at 47-48. The term "compelling" was not defined, and it applied equally to inmate-to-civilian marriages and to inmate-to-inmate marriages. Vol. I at 217; Vol. III at 281.

At trial, each defendant seemed to have his own definition of "compelling." Defendant Turner thought it meant that the inmates had to prove the fiancé had a prior relationship with the inmate in which "they [had] lived together or been in a paramour situation for several years" or where a child was "involved" *and* that it was a "positive situation." Vol. I at 215-16. Mr. Blackwell opined that "[c]ompelling reasons typically are things like if there is impending death of a proposed spouse, if there are children that could be affected in a negative fashion if the marriage were not allowed to be culminated. Financial reasons...." Vol. IV at 30.

Donald Wyrick testified that inmates could marry "[i]f two people were friends or living together as boy and girlfriend on the street and the girl was pregnant and they both came to prison and the girl wanted to marry the fellow so the baby would have a name and be a legitimate baby, that way...." Vol. IV at 237. On the other hand, Wyrick felt that an inmate's marriage to a civilian should be allowed "if no one sees any good reason why they shouldn't." *Id.* at 241. Wyrick also groused, "[t]here is no earthly sense in inmates marrying each other, anyway...." Vol. IV at 249.

Plaintiffs located only one inmate whose proposed marriage was apparently judged under that new standard because, beginning in December, 1983, all inmate marriage requests at Renz were delayed or forbidden because of the impending trial. Vol. III at 50, 125-26. The District Court found that this policy "has the appearance of penalizing the inmate population because some inmates have chosen to litigate." Finding No. 19, 586 F. Supp. at 592.[4] Vol. III at 50, 125-26.

Immediately after trial, Judy Henderson requested permission to marry ex-inmate Don Hagan "as soon as possible." P. Ex. 104, attached to Plaintiffs' Post-Trial Brief (filed March 23, 1984). Englebrecht's response indicates the sort of careful analysis of the inmate's "best interests" which goes into a decision to deny marriage at Renz:

> no.
>
> Due to policy for there is no compeling [sic] or substanteil [sic] reason at this time. The Judge's ~~order~~ request was just that a reguest [sic] presently. [sic]

Whether their marriage requests were judged on the "compelling" rule or under Superintendent Turner's claim

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[4]At trial, Turner claimed he had no substantive objections to the marriages of either Shirley Lute or Steven Carver and had promised Mr. Carver that he would allow his marriage "after this [suit] is settled." Vol. I at 172-74; Vol. III at 126-27. Yet, when the Court suggested that the suit should not further delay any marriages, Turner backtracked, insisting that he would have to "take another look" at the requests. Vol. II at 137-42. Permission was finally granted more than a month later, and only after plaintiffs' counsel complained to the Court about the inordinate delay in having the marriages approved. Plaintiffs' Post-Trial Brief at 7-8 (filed March 23, 1984).

of "inherent authority," female inmates at Renz have been unable to explain or justify their marriages to Mr. Turner's satisfaction or prove that they are a "safe gamble." Petitioners' Brief at 31-32.

Significant testimony from Blackwell established that the Department of Corrections could handle any security problems arising from inmate marriages. Vol. IV at 35, 58-59, 97. The most challenging security "issue"—transportation of one inmate for an inmate-to-inmate marriage—evaporates when compared to the regular transportation of inmates between Renz and the other correctional facilities within the Missouri system for medical and dental care and transfers. Vol. IV at 205; Vol. II at 24-26.

In addition, the Department transports married or related inmates that are permitted to visit each other each quarter and delivers inmates for court appearances. Vol. IV at 97. The Division of Corrections had been able to deal with any security problems arising from the transportation of inmates. Vol. IV at 97, 233-34.

Significantly, the inmates who persevered in their desires to be married over defendant Turner's objections now enjoy happy marriages. *See, e.g.*, Vol. I at 208; Vol. III at 76, 80; Vol. IV at 114. The Watson-Safley marriage was beneficial to Ms. Watson and improved her attitude towards incarceration. Vol. IV at 208, 256.

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SUMMARY OF THE ARGUMENT

I. The Findings of Fact

In five days of trial, the District Court had ample opportunity to judge the credibility of defendants and the sincerity of their explanations for banning certain prisoner correspondence and forbidding most inmate marriages. The Court witnessed vigorous cross-examination of defendants and heard testimony from dozens of inmates who challenged their truthfulness.

The trial court heard credible testimony supporting factual findings that prison administrators threatened inmates who attempted to exercise their correspondence or marriage rights with the loss of various privileges and the custody of their children. 586 F. Supp. at 593. Prisoners who filed grievances or who testified on these subjects became the subject of harassment and threats by corrections employees. *Id.* The trial court received evidence that Superintendent Turner shredded an inmate's marriage grievance and told one plaintiff that "we could get all the court orders we wanted, that he didn't have to honor them."

Based on his evaluation of all the evidence, including defendants' credibility, the District Court made detailed findings of fact generally accepting plaintiffs' view of the evidence and ruling the marriage and correspondence issues in plaintiffs' favor. The Court of Appeals reviewed the trial court's findings and found them supported by substantial evidence and not clearly erroneous.

Petitioners now ask this Court to review the entire record for a second time without making a "very obvious

and exceptional show of error." *Graver Tank & Manufacturing Co. v. Linde Air Products Co.*, 336 U.S. 271, 275 (1949). The essence of defendants' request is that the Court should order the courts below to accept as true defendants' testimony so that they may win the case.

Defendants' invitation to rewrite the lower courts' findings must be declined.

II. Correspondence

The decisions of this Court have consistently (1) emphasized that inmates retain those constitutional rights which are not inherently inconsistent with their status as prisoners and (2) required an accommodation between legitimate interests of corrections officials and the constitutionally protected rights of their charges. This case involves the conflict between inmates who wish to correspond for wholesome and innocent purposes and prison administrators who assert the power to ban all inmate correspondence if they so desire.

The Missouri Department of Corrections mail rule prohibited correspondence between inmates who were not immediate family members unless corrections officials decided that the communication was in both inmates' "best interests." At Renz, the rule was applied to ban correspondence with inmates at other institutions. Plaintiffs proved that much correspondence was stopped "in accordance with policy" even when the content of the letter was innocent and did nothing to harm the prison's security or rehabilitation interests in any way.

Before this Court, defendants argue for a rule of virtually complete deference to prison officials who ration-

alize their denial of recognized constitutional rights. If defendants have their way, a healthy respect for the opinions of corrections officials would be elevated to a nearly unreviewable presumption that prison administrators may do as they please in restricting or denying inmates' constitutional rights as long as they claim to have a good reason.

Several lower courts have recognized, however, that acceptance of the standard of review advocated by defendants

> would be an abrogation of our responsibility as judges . . . . Balancing the wisdom of judicial deference against the need for courts to involve themselves in preserving precious liberties is a task of inordinate difficulty. But face it we must if we are to discharge our arduous and delicate duty as protectors and defenders of the Constitution.

Abdul Wali v. Coughlin, 754 F.2d 1015, 1018 (2d Cir 1985) (Kaufman, J.).

Corrections officials cannot be allowed to deprive inmates of the core of recognized rights, such as innocent speech and central religious practices, unless they can establish that the particular restriction is necessary to further an important governmental interest and that the limitations on fundamental rights caused by the restriction are no greater than necessary to effectuate that objective. On this record, where defendants' security concerns were exaggerated, where the corrections officials repeatedly violated their own regulations, and where inmates who attempted to exercise their rights were harassed and threatened, the courts below properly discharged their duty to protect inmates' constitutional rights. *Martinez*, 416 U.S. at 403.

III. Marriage

Defendants refused to allow adult inmates to marry even though they satisfied Missouri's statutes governing marriage. The regulation which purported to justify the marriage ban required inmates to establish a compelling reason for a marriage; what would be "compelling" was not defined, although the term apparently required at least a pregnancy created before incarceration.

Marriage is a recognized fundamental right that is not inconsistent with incarceration. *See Zablocki v. Redhail*, 434 U.S. 374, 388 (1978); *Bradbury v. Wainwright*, 718 F.2d 1538, 1540 (11th Cir. 1983). Interference with this right "cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Zablocki*, 434 U.S. at 388.

Defendants once again challenge the application of this standard by the courts below and admit of virtually no limit on the power of prison officials to deprive inmates of fundamental rights such as marriage. Their effort to explain particular denials of marriage, however, was rejected by the courts below because the State's legitimate concerns could be advanced by less restrictive means.

Time has proven that defendants' rehabilitation and security concerns were overstated. The marriages that occurred over defendants' paternalistic objections have endured.

In the more than two years since the revised regulations became effective, defendants have not found it necessary to seek any modification of those rules. With the

gentle prodding of the federal courts, Missouri prisons can accommodate the exercise of inmates' core constitutional rights.

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ARGUMENT

I. THE DISTRICT COURT'S FINDINGS OF FACT WERE SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARE NOT CLEARLY ERRONEOUS

Federal Rule of Civil Procedure 52(a) provides that "[f]indings of fact, whether based on oral or documentary evidence shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." The "[f]indings of fact by a trial court sitting without a jury are *presumed correct* and cannot be set aside unless clearly against the weight of the evidence when viewed in the light most favorable to the prevailing party." *Pickens-Bond Construction Co. v. United Brotherhood of Carpenters & Joiners, Local 690,* 586 F.2d 1234, 1239 (8th Cir. 1978) (emphasis added).

As this Court has taught:

> This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. The reviewing court oversteps the bounds of its duty under Rule 52 if it undertakes to duplicate the role of the lower court. . . . . If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous.

Anderson v. City of Bessemer City, — U.S. —, 105 S. Ct. 1504, 1511-12 (1985).

In accordance with these standards, the Court of Appeals found that the District Court's findings were not clearly erroneous. Petitioners now ask this Court to review the findings and the entire record for a second time, a task this Court normally refuses to undertake without a "very obvious and exceptional show of error." *Graver Tank,* 336 U.S. at 275. *See also Rogers v. Lodge,* 458 U.S. 613, 623 (1982). No such showing has been made here.

This Court cannot relive Judge Sachs' opportunity to observe the demeanor and judge the believability of the prison officials and their witnesses in the courtroom or under cross-examination. Their credibility undoubtedly affected the trial court's refusal to adopt most of the proposed findings submitted by defendants.

Plaintiffs' Statement of Facts cites to extensive evidence supporting the findings contested by defendants. This Court recently noted that

> [w]hen findings are based on determinations regarding the credibility of witnesses, Rule 52 demands even greater deference to the trial court's findings; for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said.

Anderson, 105 S. Ct. at 1512.

Plaintiffs suspect that no amount of evidence or proof of prison practices would have satisfied defendants or overcome their gospel of the infallibility of prison administrators. The District Court, however, has the responsibility of weighing the evidence. It did not believe defendants.[5]

The credibility of Missouri prison officials has been frequently challenged in the lower courts, which have detected a certain scorn for inmates' First Amendment rights. *See, e.g., Hill v. Blackwell,* 774 F.2d 338, 348 (8th Cir. 1985) (Arnold J., dissenting):

> The only witness testifying for defendants below was the defendant Donald Wyrick, Warden of the Missouri State Penitentiary. Several portions of Warden Wyrick's testimony appear to be flippant, or, at least, insufficiently aware of the seriousness of claims of First Amendment rights. . . . . The Warden's attitude is based upon a clear misapprehension of the facts, the kind of misapprehension that would completely justify labeling his response as "exaggerated."

Defendants' argument that the District Court's findings of fact were clearly erroneous seems itself based upon a misunderstanding of that phase. Defendants ignore most of the evidence supporting the findings and merely argue about the significance of some of the Court's findings.

Defendants' contention that the findings of fact were tainted by an erroneous conception of the law, Petitioners' Brief at 42, is similarly flawed. The findings are not of the type that are based upon the particular standard of review applied. Plaintiffs believe that the findings of fact

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[5]Apparently, Texas prison officials are not very credible either. *See* Texas Amicus Brief at 2-3.

fully justify the relief granted below, regardless of the standard of review used.

As an example of defendants' misconceptions, their argument concerning Finding No. 11, Petitioners' Brief at 47-48, ignores evidence that "inmate-to-inmate legal mail routinely is opened, stopped, and refused in violation of the Department of Corrections' written rule." *See* Vol. III at 255; Vol. IV at 164-65, 215-16; Vol. V at 65-66. Defendants cite regulation § 20-118.010(2)(B) and argue that "mail sent between inmates does not fall under any category of legal mail, thus, it does not merit automatic privilege." Petitioners' Brief at 48.

Defendants do not seem very familiar with their own rules, however, because their regulation § 20-118.010(1)(E) specifically provides that "[c]orrespondence between inmates in all divisional institutions *will be permitted* concerning legal matters." J.A. at 34 (emphasis added). Arguing about the application of that rule, however, does not make the finding clearly erroneous.

Similarly, in a challenge to the Court's findings concerning correspondence, defendants—without citations—claim that the Court "completely ignored the unrefuted evidence by the appellants' witnesses." Petitioners' Brief at 49. Simply put, the District Court was not required to accept defendants' speculative testimony as a complete answer to the sincere complaints raised by plaintiffs.

The trial court's evaluation of defendants' credibility was undoubtedly influenced by the evidence plaintiffs presented concerning corrections officials' usual attitude toward inmates' rights. As noted above, defendants repeatedly violated their own rules and inmates were harassed because of their participation in this suit.

In addition, the District Court found the grievance process inadequate. Finding No. 34, 586 F. Supp. at 593. The evidence showed the grievance process to be a rubber stamp, Vol. IV at 6-7, 59-60, and that grievances concerning marriage or free speech were treated in the same manner as a gripe about bad food. *Id.* at 49-50.

On the whole, the record reveals a pattern and practice of deep hostility towards inmates' attempts to exercise their marriage and correspondence rights. Superintendent Turner admitted he told at least one inmate that she would have to take him to Court if she wanted to get married. Vol. I at 175. He further betrayed his attitude toward inmates' constitutional rights when he told Ms. Watson that plaintiffs "could get all the court orders we wanted, that he didn't have to honor them." Vol. IV at 203.

The District Court's findings, affirmed by the Court of Appeals, are fully supported by the record and are not clearly erroneous.

II. THE REGULATIONS AND PRACTICES OF THE MISSOURI DEPARTMENT OF CORRECTIONS UNCONSTITUTIONALLY INFRINGE UPON THE FIRST AMENDMENT RIGHTS OF INMATES TO CORRESPOND

The First Amendment issue in this case is whether the practice of routinely prohibiting innocent correspondence between inmates violates plaintiffs' free speech rights. Put another way, the issue is whether corrections officers may ban all innocent inmate-to-inmate correspondence because a small percentage of prisoners may try to abuse their correspondence rights.

This Court has always "insisted that prisoners be accorded those rights not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration." *Hudson v. Palmer,* 468 U.S. 517, 523 (1984). *See also Jones v. North Carolina Prisoner's Labor Union, Inc.,* 433 U.S. 119, 125 (1977); *Pell v. Procunier,* 417 U.S. 817, 822 (1974). Furthermore, this Court instructs the lower courts to seek a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." *Bell v. Wolfish,* 441 U.S. 520, 546 (1979), *quoting Wolff v. McDonnell,* 418 U.S. 539, 556 (1974).

Defendants allow certain inmate correspondence, apparently recognizing that such communication is not "fundamentally inconsistent with imprisonment." For their part, plaintiffs have always been prepared to accommodate the State's legitimate interests by accepting prison employees' ability to read all non-privileged inmate mail. Defendants, however, refused to compromise by acknowledging any limit to their power to ban all inmate-to-inmate correspondence if they so desire.

The courts below harmonized this Court's teachings and reconciled the tension between constitutional rights and prison practicalities. In response, petitioners and their amici implicitly urge this Court to ignore the factual findings of the District Court and adopt a standard of review so deferential to prison bureaucrats that it would effectively abdicate the traditional judicial function of protecting individual rights.

Defendants inflate a healthy respect for corrections expertise into an irrebuttable presumption in favor of the prison practice. Despite the extensive evidence in this case that the officials' alleged concerns were overstated,

speculative, and unpersuasive, defendants ask this Court to rule as a matter of constitutional law that their trial testimony on direct examination had to be accepted as absolute truth by the District Court.

This conclusion would dictate that in any area where prison administrators can voice an arguably logical rationale for limiting or denying an inmate's fundamental constitutional rights, the courts must approve the restriction. Petitioners' Brief at 18, 20-21, 32; Solicitor General's Brief at 13. Under the method of analysis urged by defendants, a prison official who sincerely concludes that the Christian faith and belief in absolution and the guarantee of redemption interferes with inmates' rehabilitation (or, to use defendants' term, is not in their "best interest"), could forbid his charges from practicing their religion without violating the First Amendment. As defendants put it, "[i]f the superintendent perceives certain activity which detrimentally affects the rehabilitation of an inmate, he should be permitted to prohibit or limit such activity." Petitioners' Brief at 32.

This Court has never taken such an uncompromising position. In *Martinez,* the Court recognized the First Amendment "interest of prisoners and their correspondents in uncensored communications by letter," 416 U.S. at 418, and established "the proper standard for deciding whether a particular regulation or practice relating to inmate correspondence constitutes an impermissible restraint of First Amendment liberties." *Id.* at 413. It held that any restriction or censorship of inmate mail is justified only if the prison authorities meet two criteria:

> First, the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. . . . . Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Thus a restriction on inmate correspondence that furthers an important or substantial interest of penal administration will nonetheless be invalid if its sweep is unnecessarily broad.

Id. at 413-14.

Although paying proper deference to correctional officials' expertise, the District Court nevertheless held that the regulations and practices of the Missouri Department of Corrections regarding inmate-to-inmate correspondence were "unnecessarily sweeping" and that prison officials "can effectively cope with [the alleged security concerns] through less restrictive means, such as increased scanning of the mail of potentially troublesome inmates." 586 F. Supp. at 596.

In addition, the trial court held that the Division of Corrections mail regulations and practices were applied in an arbitrary and capricious manner and "fail[ed] to provide for the minimum constitutional procedural safeguards against arbitrary and capricious censorship." *Id.* Significantly, defendants did not appeal from this latter holding. By itself, this ruling justifies the relief granted below. *See Bell,* 441 U.S. at 539.[6]

The Court of Appeals reviewed both the factual findings and the legal analysis of the trial court and affirmed

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[6]Moreover, the "best interests" standard is unconstitutionally vague because persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co.,* 269 U.S. 385, 391 (1925).

based on the conclusion "that the exchange of inmate-to-inmate mail is not presumptively dangerous nor inherently inconsistent with legitimate [penological] objectives." 777 F.2d at 1313. The Court followed the analysis of Judge Kaufman in *Abdul Wali*, 754 F.2d at 1033:

> Our reading of the cases suggests a tripartite standard, drawn by reference to the nature of the right being asserted by prisoners, the type of activity in which they seek to engage, and whether the challenged restriction works a total deprivation (as opposed to a mere limitation) on the exercise of that right. . . . .
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> . . . .
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> Where . . . the activity in which prisoners seek to engage is not presumptively dangerous, and where official action (or inaction) works to deprive rather than merely limit the means of exercising a protected right, professional judgment must occasionally yield to constitutional mandate. In these limited circumstances, it is incumbent on prison officials to show that a particular restriction is necessary to further an important governmental interest, and that the limitations on freedoms occasioned by the restriction are no greater than necessary to effectuate the governmental objective involved.

Defendants attack the lower courts' analysis of the inmate-to-inmate mail regulation, contending that their power over correspondence is unfettered by traditional First Amendment analysis even where inmate correspondence is "pure speech," untainted by any threat to the security or order of the institution. Defendants' sweeping vision of their power is not justified by the cases they cite.

The proper lesson of cases like *Pell, Bell,* and *Jones* is that in areas arguably peripheral to central First Amendment concerns—such as face-to-face media interviews with inmates, receiving hardcover books, or mass mailings to solicit membership in an illegal prisoner's union—prison authorities' reasonable rules should be upheld so long as the officials do not exaggerate their response to their legitimate concerns. This relevantly lenient standard does not and should not apply where pure, innocent speech between inmates is forbidden by the challenged practice, particularly where the prison officials have demonstrated a history of abuse of inmates' rights.

Except for *Martinez,* none of this Court's prior prisoner cases has dealt with core First Amendment rights or pure free speech. *Shabazz v. O'Lone,* 782 F.2d 416, 420 (3d Cir. 1986) (en banc), *petition for cert. filed,* 54 U.S.L.W. 3730 (U.S. Apr. 6, 1986) (No. 85-1722).[7] None overruled the *Martinez* standard; indeed, *Jones* and *Bell* explicitly rely on *Martinez* for authority and support. *Jones,* 433 U.S. at 119, 130, 133; *Bell,* 441 U.S. at 547. Moreover, in each of those cases, the Court recognized and found that inmates' First Amendment rights were protected by alternative channels of communication.

In grappling with the tension between inmates' rights and prison practicalities, the lower courts have fashioned a

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[7]Defendants applaud the standard of review once used by the Court of Appeals for the Third Circuit, which limited the judicial inquiry to determining whether prison officials' opinions were sincerely held and arguably correct. *St. Claire v. Cuyler,* 634 F.2d 109, 114 (3rd Cir. 1980). *See* Petitioners' Brief at 21. However, the Court of Appeals for the Third Circuit, sitting en banc, has overruled *St. Claire* because the earlier panel formulation provides insufficient protection for inmates' rights. *Shabazz,* 782 F.2d at 419-20.

workable standard based on accommodation of the conflicting interests. Core rights such as pure speech, fundamental religious practices, and marriage deserve the least restrictive alternative analysis; arguably peripheral "rights" receive review which is more deferential to the concerns of prison officials. *See Shabazz,* 782 F.2d at 420; *Abdul Wali,* 754 F.2d at 1033; *Bradbury,* 718 F.2d at 1543; *Storseth v. Spellman,* 654 F.2d 1349, 1355-56 (9th Cir. 1981). *See also Wiggins v. Sargent,* 753 F.2d 663 (8th Cir. 1985); *Stevens v. Ralston,* 674 F.2d 759, 761 (8th Cir. 1982) (per curiam); *Watts v. Brewer,* 588 F.2d 646, 650 (8th Cir. 1978); *Guajardo v. Estelle,* 580 F.2d 748, 753-57 (5th Cir. 1978); *Rudolph v. Locke,* 594 F.2d 1076, 1077 (5th Cir. 1979) (per curriam); ABA Standards For Criminal Justice Standard 23-6.1(a) and commentary (2d ed. 1983). This Court should adopt the approach used by these thoughtful judges rather than the extreme position advocated by defendants.

Defendants label the analysis of the Second and Eighth Circuits as "fundamentally flawed because it cannot be applied without an appeals court deciding what is 'inherently dangerous.'" Petitioners' Brief at 25. They parade imaginary horribles, suggesting that adoption of the lower courts' method of analysis would "make the writing of prison regulations impossible." *Id.*[8]

[8]Defendants' suggestion that corrections officers and their counsel will be unable to apply the *Abdul Wali* analysis, Petitioners' Brief at 25, is fundamentally inconsistent with their claims to omniscience when it comes to determining the "best interests" of their charges. Surely, the mental acuity used to predict the success of prisoners' proposed marriages could be turned to reaching a fair balance between inmates' rights and prison needs. Plaintiffs believe that prison officials and their counsel can recognize fundamental rights and apply the least restrictive alternative analysis.

The absurdity of defendants' position is revealed by their declaration that "[i]nmate-to-inmate communication is an 'inherently dangerous' activity *just as this Court found inmate association to be in Jones. . . .*" *Id.* at 26 (emphasis added). Apparently courts are capable of identifying "inherently dangerous" activities when they agree with prison administrators; only when a court disagrees with corrections officials does it lose its knack for making such fine determinations.

It is clear that inmate-to-inmate communication is not an "inherently dangerous" activity, for defendants claim they approve all familial mail and 25% of all non-familial correspondence. The only possibility which inheres in inmate communication is that it potentially may —but not necessarily will—be abused by a small percentage of prisoners. In this regard, inmate-to-inmate mail is no more "inherently dangerous" than inmate correspondence with civilians.

Defendants' attempt to characterize their correspondence rule as a mere "time, place or manner" restriction, Petitioners' Brief at 28-29, is disingenuous. Len Safley, for example, had no alternative time, place, or manner of fulfilling his desire to communicate with his fianée. *Cf. Vester v. Rogers,* 795 F.2d 1179, 1183 n.5 (4th Cir. 1986) (upholding ban on inmate-to-inmate correspondence on ground that "communication would be possible through non-prisoner intermediaries such as family, friends, clergy, etc.").

In the Missouri prison system, any attempt to communicate through civilians or other inmates would be circumvention of the mail rules which would subject the in-

mate to discipline and the civilian to a return of his correspondence. *See, e.g.,* Vol. I at 145. When Mr. Safley's mother wrote to P. J. Watson telling her that Len "sends you love and hopes that you are okay, he thinks of you continually, so hang in there," this letter was refused by Renz as containing "contraband." Vol. V at 93-94; P. Ex. 71, Vol. IV at 185; *see also* P. Ex. 19, Vol. III at 199-200.[9]

On the facts of this case, defendants did not and cannot establish that innocent correspondence between two inmates is "fundamentally inconsistent with imprisonment." Defendants' expert conceded that 25% of non-familial inmate-to-inmate correspondence is "positive." Vol. V at 22. Additionally, defendants claimed they permitted the exchange of letters between "unapproved" correspondents when; on a leter-by-letter basis, it was determined to be "positive." Vol. V at 53-54.

Numerous witnesses testified that they wished to correspond with various unrelated inmates at other correctional facilities for the purpose of maintaining their friendships and relationships. Vol. I at 128, 146-47, 204-05; Vol. III at 41-43, 51-52, 87-90, 103, 115, 190-92, 225. Renz inmates who were prohibited from writing their friends. however, had no legal "alternative channel of communication."[10] Those inmates who wished to maintain relation-

[9]Iowa's Amicus Brief mistakenly suggests that Missouri's "prison policy would also allow the sending of letters by each of these inmates to nonincarcerated relatives who then could have exchanged news about each of the inmates." Iowa's Amicus Brief at 6-7.

[10]Many Renz inmates felt the need to communicate so strongly that they risked punishment by circumventing the mail rule. Vol. I at 154-55; Vol. IV at 177-78, 182. Of course, when the inmate successfully circumvents the mail, no state interest is served because there is no surveillance of the communication.

ships and friendships with non-related inmates at other institutions or to discuss politics, religion, or only mutual affection were forbidden to do so.

Plaintiffs invite the Court's attention to the examples of inmate correspondence that were stopped by defendants. Apps. A through D. The Court will find romantic, sometimes gushy, sentimentality. Yet, there was no rational, much less substantial, reason for defendants to have censored them.

Defendants' "security" rationalization for the Renz correspondence practices seems to have been developed to buttress defendants' position at trial. The testimony showed that the reason stated for denying correspondence —on those few occasions when the inmate received an explanation—was that correspondence was simply not allowed or that it was not in the inmate's "best interest." Defendants' interjection of irrelevant evidence regarding instances of gang infiltration and violence at MSP in a desperate attempt to bolster their position indicates how tenuous and speculative the "security" rationale was.[11]

Furthermore, defendants' claims that permitting innocent inmate-to-inmate correspondence would cause overwhelming security and financial problems[12] are also specu-

[11]Defendants also cite Sally Halford's opinion that Kansas' open correspondence policy contributed to an escape. The District Court's questioning revealed, however, that this was only speculation. Vol. III at 158-59. For similar speculation, see Vol. III at 271.

[12]*Cf. Rhodes v. Chapman,* 452 U.S. 337, 359 (1981) (Brennan, J., concurring) (constitutional requirements are not limited by dollar considerations).

lative and exaggerated. The revised rule drafted by the Department of Corrections adequately protects prison officials' ability to censor or stop inmate-to-inmate mail that threatens institutional security or safety.

The new rule satisfactorily strikes a balance between the inmates' First Amendment rights and the State's legitimate interests. Reading inmate mail may be "very boring," Vol. III at 176, but it is far better to bore mail room personnel for a short period of time each day than to strip all inmates of their constitutional right to innocent correspondence. Indeed, now that the Missouri Department of Corrections has identified the 6.7% of all inmates who cause 90% of the problems, *see* Solicitor General's Brief at 20 n.13, defendants can focus their attention on the mail of those most troublesome inmates.[13]

On this record, defendants' apocalyptic predictions that "inmates will have their rehabilitation retarded," Petitioners' Brief at 24, and that they would be unable to cope with their security concerns by reading prison mail, Petitioners' Brief at 22, can be recognized as the exaggerated protestations of officials unaccustomed to acknowledging any measure of inmates' rights. If the revised rules started wreaking so much havoc on their effective date in June, 1984, why have the defendants failed to ask the District Court for any revision of the Court's order?

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[13]Similarly, Texas prison officials were unable to convince Judge Singleton that the correspondence of all 38,000 Texas inmates should be stopped because of 1230 alleged gang members. Lodging of the State of Texas at 122-34; Texas' Amicus Brief at 2-3.

If this Court concludes that the lower courts were mistaken in the method of analysis used, this case must be remanded for supplemental findings of fact and conclusions of law. Issues on which supplemental findings would be necessary include whether prison officials' beliefs were reasonable and sincere and whether they exaggerated their response to their legitimate concerns. *See, e.g., Jones,* 433 U.S. at 127.[14]

III. THE REGULATIONS AND PRACTICES OF THE MISSOURI DEPARTMENT OF CORRECTIONS UNCONSTITUTIONALLY INFRINGE UPON THE RIGHTS OF INMATES TO MARRY

The Court of Appeals affirmed the District Court's application of the "strict scrutiny" standard in evaluating the Department of Corrections' inmate marriage rule, relying on *Zablocki, Bradbury,* and *Abdul Wali.* 777 F.2d at 1314. The Court of Appeals noted that the District Court "assumed that the marriage rules were intended to serve the legitimate state interests in security and rehabilitation," *id.* at 1313, and agreed with the District Court that the rule "unconstitutionally infringes upon plaintiffs' right to marriage because it is far more restrictive than is either reasonable or essential for the protection of any state security interest, or any other legitimate interest, such as rehabilitation of inmates." 586 F. Supp. at 594; 777 F.2d at 1314. This holding was amply justified by the evidence in this case.

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[14]Remand for similar factual findings would also be necessary if the Court disagrees with the lower courts' analysis of the marriage issue.

Defendants concede that marriage is a fundamental right protected by the United States Constitution. Petitioners' Brief at 30. *See Zablocki,* 434 U.S. at 383; *Loving v. Virginia,* 388 U.S. 1, 12 (1967). This Court has recognized the importance of an individual's freedom of personal choice on marriage decisions. *City of Akron v. Akron Center for Reproductive Health, Inc.,* 462 U.S. 416, 426 (1983).

> We deal with a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Griswold v. Connecticut, 381 U.S. 479, 486 (1965).

Because freedom of personal choice in marriage is central among due process liberties, virtually all of the courts which have considered the issue since *Zablocki* have ruled that a prison regulation interfering with the exercise of the fundamental right of marriage must further a substantial governmental interest and must be no more restrictive than necessary to protect that interest. *Bradbury,* 718 F.2d at 1543; *Lockert v. Faulkner,* 574 F. Supp. 606 (N.D. Ind. 1983); *Salisbury v. List,* 501 F. Supp. 105, 109 (D. Nev. 1980); *In Re Victor Carrafa,* 77 Cal. App. 3d 788, 143 Cal. Rptr. 848 (1978) (based both on fundamental nature of marriage right and state statute recognizing marriage as fundamental). *See also* ABA STANDARDS FOR CRIMINAL JUSTICE Standard 23-8.6(a)(i). *But see Wool v. Hogan,* 505 F. Supp. 928 (D. Vt. 1981).

The only restrictions placed on marriage by the Missouri legislature are that both parties must be single and over 18 years of age (or have parental consent), that they must have a marriage license, and that the marriage must be solemnized by an appropriate person. *See generally* MO. REV. STAT. §§ 451.020 to 451.120 (1978 and 1984 Supp.). Thus, under Missouri law, the various plaintiffs were entitled to be married.

As discussed above, an inmate loses only those rights that must be sacrificed in order to serve legitimate penological needs. *Bell,* 441 U.S. at 545-46; *Jones,* 433 U.S. at 125; *Bradbury,* 718 F.2d at 1541. "When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect the constitutional rights." *Martinez,* 416 U.S. at 405-06.

The plaintiffs and the lower courts acknowledged the prison administrators' concerns. The District Court noted, however:

> The problem with placing total reliance on the views of prison administrators would be their natural inclination to form opinions based on convenience, conceivable though remote security interests, financial considerations and the like. While giving due deference to such testimony, the court has an inescapable duty of striking a constitutional balance.

586 F. Supp. at 594 n.2. The trial court concluded from the evidence that the Missouri Department of Corrections regulation regarding inmate marriages was not the least

restrictive alternative to achieve Missouri's legitimate governmental interests. 586 F. Supp. at 594. The Court of Appeals agreed and also observed that "[n]o specific incident of the realization of any of these [rehabilitation or security] concerns, involving these or any other inmates, was alleged or shown." 777 F.2d at 1315.

Defendants do not confront or meet the lower courts' holdings directly by claiming that their power to prevent inmate marriages is the least restrictive alternative available to advance the State's legitimate interests. Instead, they choose an assault on the courts' method of analysis and, once again, advocate that absolute deference should be given to prison administrators dealing in an area in which they arguably have expertise. *See* Petitioners' Brief at 32, quoted at page 30, *supra*.

Predictably, defendants read cases like *Jones, Bell, Block v. Rutherford,* 468 U.S. 576 (1984), and *Otey v. Best,* 680 F.2d 1231 (8th Cir. 1982), so broadly that they would admit of virtually no limit on the power of prison officials. Defendants argue "[t]here is little reason to apply the 'least restrictive alternative test' after the advent of [*Jones*]; [*Bell*]; [*Block*]; [*Otey*]." Petitioners' Brief at 31 (citations omitted).

Upon studying those cases, however, a principle emerges by which prisons may regulate the *manner* of exercise of various constitutional rights, but the prison authorities may not *prevent* the exercise of recognized fundamental rights such as marriage, pure speech, and the practice of central religious tenets without subjecting themselves to more stringent methods of constitutional scrutiny. *Shabazz,* 782 F.2d at 420; *Abdul Wali,* 754 F.2d at 1033; *Bradbury,* 718 F.2d at 1542.

In this case, defendants deprived the essence of marriage by preventing most inmates from marrying the spouse of his or her choice. As the Court of Appeals noted, "both the old marriage rule as it was applied by Superintendent Turner and the 1983 rule on its face absolutely prevent those inmates denied permission from getting married. There are no alternative means of exercising that right." 777 F.2d at 1314.

Even if this Court were to reject the reasoning of the Court of Appeals and the District Court, the holdings should still be affirmed because of the substantial evidence and the implicit holding that defendants have exaggerated their response to the needs of security, order, and rehabilitation in Missouri institutions. After evaluating the evidence, the District Court ultimately rejected defendants' assertion that the only way to maintain these governmental interests was to prevent certain inmates from being married.

Moreover, the Department of Corrections' penultimate marriage rule, which purported to require inmates to establish a "compelling" reason for their proposed marriage, is not even rationally related to the State's legitimate concerns. The word "compelling" was not defined; defendants Turner, Blackwell, and Wyrick each created their own formulation at trial. *See* Vol. I at 215-17; Vol. IV at 30, 237, 249.[15] The lowest common denominator of these definitions seems to be that a marriage *might* be allowed if the inmates had lived together prior to the time they were incarcerated and "the girl was pregnant . . . and the girl

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[15]These differences in the definition of "compelling" establish that the Department's marriage rule is unconstitutionally vague. *See generally Connally,* 269 U.S. at 391.

wanted to marry the fellow so the baby would have a name. . . . " Vol. IV at 237.

There is no rational relation between a rule which allows only inmates with preexisting relationships and pregnancies to be married and security, order, or rehabilitation of the inmates.[16] Why would the marriage of two inmates who met in prison create a greater security risk than the marriage of two inmates who lived together before they were incarcerated? Why would the marriage of two inmates who have never had sexual intercourse or a child necessarily detract from each others' rehabilitation more than the marriage of two inmates expecting an illegitimate baby? Why would "love triangles" be more likely to occur after a marriage ceremony than before?

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[16]At page 31 of Petitioners' Brief they attempt to rationalize the "compelling interest" rule. Unfortunately, some of the statements attributed to defendants do not appear on the pages cited. Plaintiffs have avoided challenging all of defendants' citations and discussion of the evidence, but the errors in Petitioners' Brief at 33-34 demand a response:

Mrs. Roberts in no way withdrew her testimony that Mr. Turner had threatened her with the loss of her children. Vol. III at 61. Moreover, while she was appreciative of Mr. Turner's concern, *she* decided not to marry the "gigolo" when she first met him—she did not need Turner's paternalistic advice to recognize an unworthy suitor. *Id.* at 74-75.

Secondly, the filing of this lawsuit did not precipitate Ms. Watson's "change of heart" with regard to Mr. Safley. Ms. Watson testified that she requested permission to write Mr. Safley two or three weeks after he left Renz in June of 1981, Vol. IV at 201—more than three months before the suit was filed. Turner admitted he knew she wanted to marry Mr. Safley in December, 1981. Vol. II at 51.

Thirdly, Judy Henderson denied that she requested protective custody and testified that any enemies she might have had were in Springfield and that her fiance' David Means was certainly not her enemy. Vol. III at 203, 220, 224.

The inmates had legitimate reasons for desiring marriage. For example, Nancy Row described why she wanted to marry:

> Because I felt like at that time, and I still feel, like it would be a good emotional security to have somebody that I knew out there that cared about me as a person that I could relate to, to know what I was going through in here. He had been in the same situation. He knew the circumstances I was here under and was still yet willing to make that marriage. I felt like it was just an emotional bond as well as an emotional security for me.

Vol. III at 39-40.[17]

Plaintiff's expert, Louise Bouschard, the Executive Director of the Women's Self-Help Center in St. Louis and a counselor for female prisoners at Renz, testified concerning the essentials of helping women offenders regain self-worth and confidence. Vol. IV at 132, 148-49. She noted that these inmates "need to have the right to some control over their lives," *id.* at 153, including the decisions concerning correspondents and fiancés. *Id.* at 149.

The evidence revealed that the few inmates who were married despite Superintendent Turner's objections enjoy a lasting and happy marriage. Vol. I at 208; Vol. III at 76, 80. After the courtroom marriage of Ms. Watson and Mr. Safely, both a Renz guard and Ms. Watson's caseworker were pleased to report an improvement in her attitude. Vol. IV at 208, 256.

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[17]Defendants' assertion that inmates testified that marriage between inmates is "very seldom a good idea," Petitioners' Brief at 39, actually cites to the testimony of one of defendants' witnesses—*not* an inmate. Vol. III at 156.

The Safleys never met before they were both incarcerated at Renz and they still have no children. Neither fact makes their love any less sincere or their union any less sacred.

Prison guards-turned-superintendents should not be allowed to exercise a power over other adults for which they have no training and no expertise. Under either the strict scrutiny standard or the reasoning advanced by defendants, the Missouri Department of Corrections' inmate marriage rule unconstitutionally infringes upon the inmates' fundamental right of marriage.

CONCLUSION

For the reasons stated, the Court of Appeal's decision should be affirmed.

Respectfully submitted,

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APPENDIX A

[P. Ex. 16]

8-18-83
Thurs.

Dear Mike,

Hi little brother. How are things going? Me, I'm doing okay just trying to get something done on this case. It does take time & patience galore.

It was so good to see you & dad. I sure miss & love you guys.

How is Sherry & the boys? Mike, let things work out the say they should. Don't get anxious. Sometimes being apart from one another makes a person realize just how much you do love them.

I know since Dave has been gone I've realized how very much I really do love him. I can't wait until we're married. It won't be long now!

Tell mother I'll call her Thurs. night at church. I need to talk to her. A week from today at 8:30 p.m.

It has really been hot here.

I'm glad I at least have a fan. Even if it blows hot air! *ha ha!* I'm use to all the hot air from all these inmates! *ha!*

Don't forget to send me a money order please. We order our books by the 23rd or 25th so you'll have to hurry up.

I'm still trying to hire Hale Brown. I hope & pray that somehow the Lord will provide a way. I'll tell ya the

Lord has been good to me & helped me everyday to deal with this time.

Little Chip will soon have a birthday Sept. 6th. That's what is going to be hard. I miss him & Angel so much. I've got alot of making up to do when I get home with them. I'm just glad we are close & they can communicate with me about anything. I always want us to be open.

I wrote Larry the other day. He was suppose to be down here but didn't make it.

How do you like your new duplex? It really sounds nice. I can't place where Cairo is in Spfld.

Well little brother I'll close. Write me soon!

Love

Judy

APPENDIX B

[P. Ex. 72]*

[P. 1]

A SPECIAL
BIRTHDAY WISH
FOR YOU

My wish for you
is for no less
Than love and joy
and happiness,
A tranquil heart —
good friends and true
And dear ones
ever close to you.

[P. 2]

Dear Jeannie
Can't seem
to put my thoughts in words
But surely you must know
A heart can feel
so many things
That words can never show
And with your understanding way
You'll know this wish for you
Brings lots of love and gratitude
For thoughtful things you do

HAPPY BIRTHDAY

[P. 3]

We Love You
Very Much
Mama Nez & Len

* Italics represent handwriting.

APPENDIX C

[P. Ex. 102]

WANTED

[Drawing of Woman's Profile]

SUSAN CHRISTENSEN

SUBJECT DESCRIPTION: Soft brown eyes. Sweet luscious lips. A beautiful smile. Heavenly dangerous hip's.

WANTED FOR: Depravations of affection! Lack of lustfull passionate correspondence. Polyandry.

IF LOCATED CONTACT POSTMASTER GENERAL OF THE UNITED STATES OF BEAUTIFUL PEOPLE IN THE DISTRICT OF LOVE LAND ..... Subject to be shiped to a cooler climate. Package carefully. Handle with care.

UNITED STATES OF BEAUTIFUL PEOPLE
DISTRICT COURT OF THE CITY OF
••••••LOVE LAND••••••

"INDICTMENT"

EIGHT COUNTS:

RETURNED BY THE GRAND JURY FOR .....

SWEET HEART COUNTY .....

Against

Defendant Susan K. Christensen

Count (1) Aggravated Assault, by love blows "First Degree"

Count (2) Negligence, to plaintiffs Heart "First Degree"

Count (3) Willfully with-holding Senuous Love "First Degree"

Count (4) Aiding & Abetting with other men "First Degree" Seccond Degree Third Degree Fourth Degree Every Degree I can think of

Count (5) Unloving thoughts, "First Degree"

Count (6) Enslaveing Kisses "First Degree"

Count (7) Deadly & Dangerous Weapon, Body, "First Degree"

Count (8) Kidnapped plaintiffs, Heart, Mind & Soul "First Degree"

IN THE SUPERIOR COURT OF
JUDGE G. HEARTACHE SR.

The Jury has duly found you guilty of said Charges, and that you be remanded to the custody of Sweet Heart, County.

UNITED STATES OF BEAUTIFUL PEOPLE
FOR THE
CITY OF LOVE LAND*

"AFFIDAVITE OF CLAIM"

Civil Action February 14th

If anyone here or not present has just cause, why this man and women, should not be joined in someway let him speak now or for ever hold his peace. . . . . .

"NOTIFICATION OF INDICTMENT"

This is to notify all parties therein that the said, Bride, One *Susan K. Christensen* Has an outstanding warrant pending against her, and is wanted on an Eight Count Indictment filed with the City Clerk in the State of Beautiful People, County of Sweet Hear, City of Loveland.

Attorney "Left Abused Heartache Jr., has the Power of Attorney" for Plaintiff and untill said Bride comes forth to answer charges, said Marriage would be . . . . .

NULL

LEFT ABUSED HEARTACHE
ATTORNEY AT LAW
13 ROCK-A-BED-DR. — *H.M. SOGOOD*
OFFICE ADDRESS — WITNESS

DAIL (L) FOR LOVE — *E.C. SUGARPOP*
Phone-Luv Jester — WITNESS

AFFIDAVITS OF FACTS

I *Chris Christensen*
Residing at M.E.C.C. Lonely Heart Dr. Do hereby retain Left Abused Heartache Jr. as my Attorney at Law.

It has duly been submitted to this Court of Law in the State Of Beautiful People, Sweet Heart County, City Of Love Land, Presiding Judge "G. Heartache Sr. An Indictment of Greivous Crimes Against Plaintiffs ol lady by defendant Susan K. Christensen.

Mr. L.A. Heartache Jr., as Attorney for the plaintiff you may proceed with the affidavite sworn to by your client Chris Christensen. May it please the Court we shall prove that the defendant, one, Susan K. Christensen is guilty beyound a shadow of a doubt in that she did commit each and every count of said indictment.

Crimes which are so hidous that all of Sweet Heart County's heart goes out to Plaintiff. The very nature of these gasly crimes righ of malice, forethought and premeditated heart break.

In count (one) of this indictment the defendant perpetrated the charge of aggravated assult on his person by repeatedly hitting plaintiff with swift Love Blows causeing plaintiff to scream in agoney (Mercy, Mercy, Me) . . . . !

Count (two) Willfully with holding Senuous Love giving him a taste of Honey and suddenly with drawing the Sugar an Spice, plaintiff is now in a state of (Endless Love) . . . . !

Plaintiff also claims that he was a sucker for her love.

Count (three) Negligence to plaintiffs Heart by coming into his life and then leaving him day dreaming. . . !

Count (four) Aiding and Abetting with other men making plaintiff realize that he is drowning in a Sea of Love.

Count (five) Unloving thoughts in that defendant is now thinking of another man and plaintiff is saying I gave the best of my love. . . . !

Count (six) Enslaving Kisses, so sweet and tender that plaintiff never once had a chance. Now defendant wants to kiss and say good by . . . . !

Count (seven) Deadly and dangerous weapons to wit: defendant did woo plaintiff with dangerous moves, caress and the most of all incriminating a sensual touches, causing him to say I love you Just the way you are.

Count (eight) Kiddnapped Plaintiffs heart, Mind, and Soul so that plaintiff can not be blamed for any insane actions he might thus incur on anyone and is now caught up in her love and can't let go.

WHEREFORE IF APPRERHENDED ANYWHERE PLEASE BRING THIS DEFENDANT BEFORE SAID JUDGE "G. HEARTACHE SR. FOR SENTENCING AND PUNISHMENT.

"Chris"
PLAINTIFF

APPENDIX D

[P. Ex. 60]

Tues Nite 8/25/81
4 months 'til Xmas!

Hi Pretty Lady!

How are you this evening? Me? *Better* every day! You wouldn't happen to know why would you? (Smile!) Don't ask me! Just go look in the mirror and smile—You'll be looking at the answer—and—the reason!

It was made official today!—I was told! (Ha) I will start to "school" the 31st.—When I will leave for the Honor Center is not definate yet! I "suspect" the 9th but not sure—Probably won't know for sure 'til latter part of next week—

Oh, Lest I forget and to do a friend a favor—if it is, if you know what I mean—tell Judy R that "her man" is slated to come up here from Fordland next week (Wed) She *tried* to do me a favor just before I went down there. Maybe this will repay her for her efforts OK? Remember? She wanted to talk to you about us—

Don't know if the job as Secretary in Maint is open but you oughta try for it—*If* you'd want it! Pays up to 75.00 did you know that? Just a thought!—Or do you still plan on going to Cosmo? *Your* idea of being a Beautician sounds *great* to me! Just out of curiosity (mine) how long does it take to get your "diploma" (LICENSE) You *can* get a States License when you complete the course—after an exam, I mean!? HUH? Let me know! Will ya?

Jeannie, didn't you tell me once that you liked horses—and going fishin'—Well,—for another test of my

memory, how is this: Johnny, Billy and Katrina and 11, 10 & 8? Am I right? (Smile!) Surprise—or no? I wanted you to know that because—and *this* is a dig—or—"I told ya so"—You once told me I even forget *your* name!—Remember—? I won't repeat what I told you when you said it—but it started with "You are full of —! Ha Ha. Really,—we did have some *good* times together, Didn't we!? Oh. I think that I will be working at the State Fair for about 4 or 5 days starting tomorrow nite. I was disapproved at first but had a "little talk" with the Supt. here today. It started out because I appealed the Teams decision on my 3 days in Seg——and it turned into a discussion about quite a number of things that have occured during the past 2-3 months. I'll tell ya about all of it later. But we'll say this—as a clue—it involved among other things a couple of caseworkers—pretty sure you know one of them—'Enuff Said? More later—Be Patient! Ha. Oh, is that a watch on your arm, in the picture? Those are some pretty foxy "sandals" you have on (SMILE) You're welcome! I won't touch that subject any further. PJ, if I hadn't been "up to my ears" (and you know what I mean—ok?) I wouldn't have acted as I did or said what I did about the things Johnny sent—OK? Forgive me? I just wanted to hurt ya I guess. 'Cause I was hurting!

Say, if you get a chance ask Anderson Bey if the electricians from Church Farm have been coming over there, at times (to work). Will ya? Are the gals and the men still alternating "starving" everybody? Ha! Just curious!

I had a real nice letter from my mother today. She is really happy, for us. Jeannie, she knows about your case—I wrote her a real long letter while I was at Fordland and explained it to her *just* as you told me. I thought it was

best and I know it was *now*. I think she loves ya more than me, just 'cause you wrote and told her you loved me. Boy, talking about "going behind a fellers back"! That's the way with you women, though—always "scheming" on a poor dumb unsuspecting man, letting them chase ya til *you* catch *him!* Ha (Smile!) You know PJ, "all of this"—(need I say more?) has been a hell of a strain on both of us—I am *so* thankful and grateful things are as they are—(now) and I say this without having had a word (directly) from you! You are the best thing that has *ever* happened to me! Don't ever forget or doubt that I love you. Hang in there Baby, *I'll be back!* As Ever, For Ever Len

Lenny
